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PATENT

Attorney Docket No. A-70895/RBC/VEJ  
Application No. 09/977,151**REMARKS**

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendments, claims 1-5 and 15-30 are pending in the application, with claims 1 and 15 being the independent claims. Claims 6-14 have been cancelled without prejudice or disclaimer. New claims 24-30 have been added. Support for the subject matter of the new and amended claims is contained in the application as originally filed. Because the foregoing changes introduce no new matter, their entry is respectfully requested.

In Response to a Final Rejection mailed February 24, 2005, Applicant filed a Notice of Appeal on July 25, 2005. Herewith Applicant files a request for continued examination under 37 C.F.R. § 1.114 in conjunction with a Petition for Extension of Time.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 102 and 103******Claims 1-4***

The Examiner has rejected claims 1, 3, and 5 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,839,627 to Hicks et al. ("Hicks"), claim 2 as being unpatentable over Hicks in view of U.S. Patent No. 3,135,441 to Wise et al., and claim 4 as being unpatentable over the Hicks patent in view of U.S. Patent No. 5,301,849 to Guglielmini et al.

As a preliminary matter, Applicant notes that in a prior Office Action the Examiner acknowledged that the Hicks patent fails to teach or suggest "a semi-circular member having first and second ends." See Office Action mailed June 4, 2004, page 2, section 4, second paragraph. The Examiner also acknowledged that Hicks fails to teach or suggest "the semi-circular member being helical and extending approximately 270°." *Id.*

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In the most recent Office Action, the Examiner considers it obvious for one of ordinary skill in the art to modify pull device 30 "since such a modification would have involved a mere change in the shape of a component." The Examiner acknowledges that Hicks fails to teach or suggest "a semi-circular member" but submits that a "change of shape is generally recognized as being within the level of ordinary skill in the art. *See* Office Action mailed June 4, 2004, page 2, section 2, third paragraph. *See* Office Action mailed June 4, 2004, page 2, section 4, third paragraph. Applicant respectfully disagrees. The Hicks patent, either alone or in combination, fails to teach or suggest the fitment of the present invention with a gripping member including a *semicircular member having first and second terminal ends*, as is called for by claim 1.

While Hicks discloses that pull device 30 "may be a *ring* or *tab* or handle or any other protrusion suitable for grasping by the user", Hicks fails to disclose that such device may be *semicircular*. *See* Col. 5, lines 4-6 (emphasis added). Hicks fails to even disclose an open configuration. Instead, Hicks discloses a tab 30 attached to a top surface 28 of an inner membrane seal 20. Tab 30 disclosed by Hicks is depicted as having a closed ring-shape in all the figures. The closed ring shape disclosed by Hicks is distinct from an open semicircle shape both in appearance and in function, both when resting and when being pulled by a user.

Moreover, tab 30 would require modification be configured as a *semicircular member* as disclosed in claim 1. A ring shape as disclosed by Hicks forms a continuous form with no ends. In contrast, *semicircular member* disclosed in claim 1 has *first and second terminal ends*, the second end being remotely located from the first end.

Additionally, there is no motivation to modify the tab 30 of Hicks to use a *semicircular member*. Even if a change of shape is within the level of ordinary skill in the art, the Examiner has failed to point to specific motivation in Hicks for modifying the closed ring-shaped tab 30 to use a *semicircular shape versus a ring*. A pull-ring as disclosed by Hicks is pulled by a user with a single finger. In contrast, a gripping member having first and second terminal ends, as disclosed in claim 1, requires pulling up the gripping member with a finger and then grasping the member between at least two fingers. Hicks fails to include any motivation for configuring tab 30 in such a *semicircular shape* as disclosed in claim 1.

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As previously discussed in the previous *AMENDMENT AND REPLY* dated March 2, 2005, and the previous *AMENDMENT AND REPLY* dated December 6, 2004, the semicircular configuration of gripping member 69 does, however, have several advantages over prior pull rings and pull tabs. In the manufacturing process, a closed ring or tab as disclosed by Hicks requires a significantly more complex molding design. A flexible semicircular shape allows for easier ejecting of pieces from the mold. In addition, of particular importance in this application, the configuration of semicircular member disclosed in claim 1 maximizes clearance of a finger inserted inside the inner diameter of the spout. Although a ring shape as taught by Hicks aids in pulling the member, a ring shape also limits the space between the inner diameter of the spout opening and the gripping member. Thus, a user can more easily reach into the spout opening and grasp the gripping member.

For at least these reasons, Applicant respectfully submits that the Hicks patent does not anticipate nor render obvious independent claim 1. Applicant further submits that claims 2-5, which depend from claim 1, are allowable over the cited art for at least the same reasons noted above.

### *Claim 5*

The Examiner has rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over the Hicks patent. The Examiner acknowledges that Hicks fails to teach or suggest "the semicircular member being helical and extending approximately 270°." *Id.* Instead, the Examiner submits that Hicks teaches that the member can have other desired shapes suitable for grasping by the user and it would have been obvious to one of ordinary skill in the art to provide the gripping member with a semicircular and helical member. Applicant respectfully disagrees.

Hicks fails to teach or suggest the structure as disclosed in claim 5 for the reasons given above. In addition, Applicant submits that there is no motivation in Hicks to modify tab 30 to provide a semicircular member extending approximately 270°. The Examiner submits that the motivation to make such a modification would have been to save material cost. Concerns about material costs are absent from the disclosure of Hicks. Additionally, as noted above, Hicks is

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directed towards use of a pull-tab or ring for pulling up on tab 30. Moreover, if one were motivated to modify to save material costs, it is more likely that one would decrease the dimensions of the tab 30 (e.g., smaller diameter, thinner ring, etc.) as opposed to alter the configuration altogether. Even if the material costs were apparent, they would not motivate one to modify the tab of Hicks to extend approximately 270° nor use an open configuration.

***Response to citation of Matzka and Takahara et al.***

In the *AMENDMENT AND REPLY* filed December 6, 2004, Applicant requested citation of references showing semicircular gripping members. *See M.P.E.P.* § 2144.03. In response thereto, the Examiner cited to U.S. Patent No. 3,610,484 to Matzka and U.S. Patent No. 6,550,646 to Takahara et al. Matzka discloses a tearing ring 17 for removing an inner membrane to open a spout and an air inlet. Matzka is directed to a member having a "ring-segmental body" having a loop-shape to allow a user to pull up on the ring 17. Takahara discloses an "L-shaped knob 13" that protrudes from a top wall and falls "sideways." *See* column 4, lines 51-53. In contrast to the member disclosed in claim 1, for similar reasons given above with respect to Hicks, neither Matzka nor Takahara, either alone or in combination with Hicks, teaches or suggests a semicircular member, much less a semicircular member having a terminal end unconnected to the frangible membrane, as called for by claim 1.

***Allowable Subject Matter***

Applicant thanks the Examiner for indicating that claim 15-23 are allowable.

***CONCLUSION***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

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The Director is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00192; Docket No. A-70895/RBC/VEJ).

Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

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